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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]

No. 551.

GEORGE CARROLL AND JOHN KIRO, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 5, 1923.

(29,131)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

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vs.

THE UNITED STATES.

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1 The President of the United States of America to the Marshal of the United States for the Western District of Michigan and to his deputies or any or either of them:

Whereas, Arthur Q. Scully has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the Western District of Michigan Division charging that George Carrol and John Kiro late of Kent County, in the State of Michigan did, on or about the 15th day of December, A. D. 1921, at Grand Rapids in said District, in violation of Nat'l Prohibition Act of the Revised Statutes of the United States, unlawfully transport and possess intoxicating liquor and conspire to violate National Prohibition Act contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George Carrol and John Kiro wherever found in your District and bring their bodies forthwith before me or any other Commissioner having jurisdiction of said matter, to answer the said complaint, that *he* may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 16th day of Dec., A. D. 1921. Oscar E. Waer, United States Commissioner as Aforesaid.

Approved. —— ——, United States Attorney — District of ——.

Return.

Received this Warrant on the 16th day of December, 1921, at Grand Rapids and executed the same by arresting the within named George Carrol, John Kiro at Grand Rapids on the 16 day of Dec., 1921, and have *his body* now in court, as within I am commanded. Herman O'Connor, U. S. Marshal, West District of Mich., per Dan Hanley, Deputy. 16 day of Dec., 1921.

2 **Report of Proceedings Before Commissioner.**

In this matter the attorney for the respondents not only filed with the Commissioner a petition to return the property which is hereto attached, but also raised certain legal questions upon the hearing before the Commissioner.

The only testimony before the Commissioner was that of Arthur Q. Scully, Special Prohibition Agent, who testified that the respondents were apprehended on the public highway and their automobile searched, whereupon the whiskey which the respondents are charged with having possessed and transported was discovered. The witness stated that when the respondents were met upon the highway by the prohibition officers, the prohibition officers were not on the look-out for the respondents and had no reason to believe that the respond-

ents were transporting liquor. The prohibition officers, however, stopped the respondents and upon searching their automobile, found concealed in the cushions and other portions of the car a large quantity of bonded whiskey.

There is no claim that the officers had any search warrant, and at the conclusion of the proofs, the attorney for the respondents moved their discharge on the ground that the search was illegal and that being illegal, the whiskey which was found was no proper evidence of the commission of the offense, and the knowledge gained by the officers in making the unlawful search could not be used as evidence against the respondents.

The commissioner denied the motion of the attorney for the respondents to dismiss the case on the ground that the National Prohibition Act was sufficiently broad to authorize the search which was made in this case. Oscar E. Waer, United States Commissioner.

3 UNITED STATES OF AMERICA:

The District Court of the United States for the Western District of Michigan, Southern Division, June Term, A. D. 1922.

WESTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

Indictment.

Filed June 10, 1922.

The Grand Jurors of the United States, duly selected, impaneled and sworn to inquire in and for the Southern Division of the Western District of Michigan, upon their oaths do present and say:

Count 1.

That heretofore and on or about, to-wit, the 15th day of December, A. D. 1921, at, to-wit, the County of Kent, in the State of Michigan, in said division of said district and within the jurisdiction of this Court, George Carrol and John Kiro, then and there unlawfully did transport, namely, over and upon highways of the County of Kent, in said division and district, in an automobile, to-wit, an Oldsmobile Roadster, Michigan License No. 314-413, Motor No. 104424, certain intoxicating liquor, namely, spirituous liquor, to-wit, 68 quarts, more or less, of Bonded whiskey, so-called, which said liquor then and there contained one half of one per centum and more of alcohol by volume, and then and there was fit for use for beverage purposes, which said transportation then and there was prohibited and unlawful by virtue of the provisions of the National Prohibition Act;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count 2.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say, that heretofore and on or about, to-wit, the 15th day of December, A. D. 1921, at the place and within
4 the jurisdiction aforesaid, said George Carrol and John Kiro, then and there unlawfully did possess certain intoxicating liquor, namely, spirituous liquor, to-wit, 68 quarts, more or less, of Bonded whiskey, so-called, which said liquor then and there contained one half of one per centum and more of alcohol by volume and then and there was prohibited and unlawful by virtue of the provisions of the National Prohibition Act;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. Edward J. Bowman, United States Attorney.

Endorsed: The United States of America vs. George Carrol, John Kiro. Indictment. Transportation and Possession Bonded Whiskey. Viol. Nat. Pro. Act. A True Bill. C. M. M. Cushway, Foreman.

[Endorsement omitted.]

5 [Title omitted.]

UNITED STATES

vs.

GEORGE CARROLL.

Petition to Return Property.

WESTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

Now comes the defendant, and states that he is a resident of the City of Detroit, State of Michigan; that on the 15th day of December, 1921, certain officers of the United States, whose names are to this defendant unknown, unlawfully and without warrant so to do, seized certain property belonging to him viz., one Oldsmobile Roadster Automobile and seventy-three quart bottles of liquor and other property, from said defendant; that said search and seizure was made in violation of the fourth and fifth amendments to the Constitution of the United States; that the said officers, on or about the same day, delivered all of said property to the District Attorney for the Western District of Michigan, the Collector of Internal Revenue, Revenue Agent, United States Marshal and Clerk of this Court, and the Agent of the Department of Justice and Prohibition Agent, and that said officers still have said property in their possession, and have

failed and refused to return to the said defendant the same,
6 or any portion thereof; that said property is now being unlawfully and improperly held by said officers, in violation of defendant's rights under the fourth and fifth Amendments to the Constitution of the United States and the Constitution of the State of Michigan; that said District Attorney proposes to use said property at the trial of the above entitled cause, as evidence against said defendant, by reason whereof, and the facts above set forth, defendant's rights under the Amendments aforesaid, and under the Constitution of the State of Michigan, have been and will be violated, unless this Court orders the return herein prayed.

Defendant further says that he is informed and believes that the officers of the United States who made said search and seizure as aforesaid, were not looking for the said defendant at the time, and had no information sufficient to cause them to believe that defendant was on the road, or that said car contained any liquor whatsoever; that the said officers passed defendant, and after proceeding for about a mile, turned about and came up to them again, and stopped the defendant, searched him and said car, and at first found nothing, either on the person of said defendant, or in said car; that just as they were about to release defendant, one of said officers found a bottle underneath the back cushion by tearing the same, and thereupon a further search was made, and the remainder of the bottles found; that said facts, or some of them, will be found in the Commissioner's return, filed in said cause, to which reference is hereby expressly made, and that no warrant was issued in said cause until the day following the search and seizure, as above set forth.

Wherefore defendant prays that the said District Attorney, Collector of Internal Revenue, Revenue Agent, District Court Clerk,
United States Marshal, Agent of the Department of Justice,
7 and Prohibition Agent be notified, and that the Court direct and order said officers to return all of said property to said defendant, and that said search and seizure be declared illegal and void. George Carroll.

Subscribed and sworn to before me, this 13 day of June, 1922. Ella M. Backus, Notary Public, Kent County, Michigan. My commission expires Mar. 13, 1925.

8 [Title omitted.]

UNITED STATES

vs.

JOHN KIRO.

Petition to Return Property.

Now comes the defendant, John Kiro, and states that he is a resident of the City of Muskegon, State of Michigan; that on the 15th day of December, 1921, certain officers of the United States, whose names are to this defendant unknown, unlawfully and without war-

rant so to do, seized certain property belonging to one George Carroll, viz, one Oldsmobile Roadster Automobile, and, to-wit, seventy-three quart bottles of liquor and other property from said George Carroll, while this defendant was in company with said George Carroll, and this defendant has been thereafter charged jointly with George Carroll with transporting and possessing intoxicating liquors, and conspiring to violate the national prohibition act.

That said search and seizure was made in violation of the fourth and fifth amendments to the Constitution of the United States; that the said officers, on or about the same day, delivered all of said property to the District Attorney for the Western District of Michigan, the Collector of Internal Revenue, Revenue Agent, United States Marshal, the Clerk of this Court, Agent of the Department of Justice, and Prohibition Agent, and that said officers still have
9 said property in their possession, and have failed and refused to return to the said George Carroll the same or any portion thereof; that said property is now being unlawfully and improperly held by said officers, in violation of defendant's rights under the fourth and fifth Amendments to the Constitution of the United States and the Constitution of the State of Michigan; that said District Attorney proposes to use said property at the trial of the above entitled cause, as evidence against said defendant, by reason whereof, and the facts above set forth, defendant's rights under the amendments aforesaid, and under the Constitution of the State of Michigan, have been and will be violated, unless this Court orders the return herein prayed.

Defendant further says that he is informed and believes that the officers of the United States who made said search and seizure as aforesaid, were not looking for the said defendant at the time, and had no information sufficient to cause them to believe that defendant was on the road, or that said car contained any liquor whatsoever; that the said officers passed defendant, and after proceeding for about a mile, turned about and came up to them again, and stopped the defendant, searched him and said car, and at first found nothing, either on the person of said defendant, or in said car; that just as they were about to release defendant, one of said officers found a bottle underneath the back cushion by tearing the same and thereupon a further search was made, and the remainder of the bottles found; that said facts, or some of them, will be found in the Commissioner's return, filed in said cause, to which reference is hereby expressly made, and that no warrant was issued in said cause until the day following the search and seizure, as above set forth.

Wherefore defendant prays that the said District Attorney, Collector of Internal Revenue, Revenue Agent, District Court
10 Clerk, United States Marshal, Agent of the Department of Justice, and Prohibition Agent be notified, and that the Court direct and order said officers to return all of said property to said George Carroll, and that said search and seizure be declared illegal and void. John Kiro.

Subscribed and sworn to before me, this 13 day of June, 1922. Ella M. Backus, Notary Public, Kent County, Michigan. My commission expires Mar. 13, 1925.

11 [Title omitted.]

Order Denying Motion to Suppress Evidence.

[Filed June 19, 1922.]

This cause came on to be heard upon the motion of the defendants to suppress the evidence procured by the United Sttaes under a search warrant and after argument, the motion was denied.

[Title omitted.]

Judgment.

[Filed June 27, 1922.]

The defendants having heretofore been convicted by the verdict of the jury and being now in court, it is found and adjudged that they are guilty as charged and that they each pay to the United States a fine of $500 within 5 days and that in default thereof they be imprisoned in the Kent County Jail until said fine is paid but not exceeding four months. Upon application of the defendant it is ordered that upon filing a supersedeas bond in the sum of $1,000 each with the usual conditions of such a bond and with sufficient sureties to be approved by the Clerk that proceedings herein be stayed for the period of 30 days to allow him to settle a bill of exceptions and sue out a writ of certiorari as he may be advised.

12 [Title omitted.]

Notice.

To Edward J. Bowman, United States District Attorney, Grand Rapids, Michigan.

SIR: Please take notice that attached hereto is a true copy of the proposed bill of exceptions in said cause which we will present to Hon. Clarence W. Sessions, District Judge, for settlement and signature, on the 19th day of July, 1922, at his office in the Federal Building, Grand Rapids, Michigan. Clare J. Hall, James A. Lombard, Thomas E. Atkinson, Attorneys for Respondents.

13 [Title omitted.]

Bill of Exceptions.

[Filed August 11, 1922.]

This cause came on to be heard before the Hon. Clarence W. Sessions, District Judge, and a jury, at the Federal Building, in the City of Grand Rapids, on Tuesday, the 20th day of June, 1922.

Appearances for the United States: Messrs. Roy M. Watkins and John Jones, Assistant District Attorneys.

Appearances for Respondents: Messrs. James A. Lombard and Thomas E. Atkinson.

Thereupon a jury was called, examined and sworn.

Mr. Lombard: If the Court please, at this time, for the purpose of saving the record, I want to renew the motion that was made and heard Monday. I don't know as I have anything more to say than I had then.

The Court: The motion will be denied and an exception noted.

14 ARTHUR SCULLY, a witness for the Government, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Jones:

My name is Arthur Scully. I am a Federal prohibition agent working under Fred Cronenwett. I have been associated in that work since two years last March. I am acquainted with the two respondents here. I first became acquainted with them in September, 1921. I saw them in December, 1921, on the road between here and Detroit, in Kent County, Michigan, in this district. Chief Cronenwett, Mr. Peterson, officer from the State Department of Public Safety, and Mr. Thayer, Federal prohibition agent, were with me. We four men were patrolling the road, looking for violators of the prohibition law. We were driving down the road toward Ionia, or toward Saranac, between Lowell and Saranac, and this Oldsmobile roadster passed us. We knew the car. We were going in the opposite direction and we passed it. We turned around and chased the car and finally stopped it. After we searched the car, we found liquor in the car. I had seen the car before. I found liquor in the back of the seat. There is only one seat. It was an Oldsmobile Roadster. The liquor was found right in the cushion part of the back seat, back of the seat. It was all in the back. We found sixty-eight quart bottles of whiskey and gin altogether, all the same size. The two men in the car were John Kiro and George Carroll, the respondents here. Mr. Peterson brought the liquor into Grand Rapids. The rest of the men stayed out on the road, patrolling. I saw the liquor afterwards, in the United States Marshal's office.

Two bottles marked Exhibits "A" and "B."

Exhibits "A" and "B" are two of the bottles taken out of
15 that car.

In September, 1921, the respondents were at my apartment. I knew them to see them before that. Both of respondents were at my apartment, 122 Oakes Street, in the City of Grand Rapids.

Q. And what, if any, in the way of anything in the way of talk or conversation went on between you and the two respondents at your apartments at that time?

Mr. Lombard: I object to that as incompetent, if Your Honor please. That was in September before this.

The Court: You may answer.

Mr. Lombard: Exception.

A. There wasn't any between myself and the two men. I overheard a conversation.

I didn't take part in the conversation. Mr. Cronenwett and the respondents did. The conversation that I heard was that they wanted to sell Mr. Cronenwett three cases of whiskey. Both respondents were present and took part in the conversation. I think $125 a case was the price set for the whiskey. I don't remember the exact price, but I know a price was set. They left and said they would be back in half an hour, with the whiskey. They came back and didn't bring it. There wasn't any conversation that I heard, when they came back; no reason why they didn't bring it that I heard. I had seen this car just twice before the 15th of December. On the particular night I mention in September and one day in October, October 6th, we were patrolling the road, and this car passed towards the direction of Detroit, and we followed the car to Lansing. We lost trace of them in Lansing and came back to Grand Rapids. I couldn't tell you just how the sixty-eight bottles in the back cushion of that seat of the roadster affected the cushion. I didn't ride in the car. I didn't help take the whiskey out of the car. I
16 didn't examine the particular manner in which the cushions were made.

Cross-examination.

By Mr. Lombard:

I didn't have any knowledge or intimation that this car was coming through at that time. I didn't have a search warrant with me for the purpose of searching this car.

Q. The fact simply is that when you passed this car, you suspected it might be carrying some liquor?

A. Yes, sir.

We went on a ways and turned around and followed it back towards Grand Rapids. We finally passed it and cut in ahead of it and stopped there. Mr. Cronenwett was the first person to go back to the car. I didn't go with him. I was driving. I remained

in the car I was driving in and Mr. Cronenwett was back to the Carroll car when I got there. I didn't have a gun with me.

Q. Did Mr. Cronenwett have a gun with him?

A. I didn't see it.

I didn't see him use it. I stopped my car right along side of the Carroll car, that is, my front wheels, I kind of cut the Carroll car off. I went far enough ahead so that the Carroll car had to stop. It is not a fact that one of us, whoever reached the car first, had a gun in his hand and presented it at these men. I didn't see any gun used there. I didn't have one with me. I couldn't say whether Mr. Cronenwett had a gun with him. I didn't see it. Mr. Kiro was driving the car. I don't know who owns the car. I saw it twice before. I am sure of that. I identify having seen it before by the license number and by it being an Oldsmobile Roadster.
17 That is the only way I identify it. I never searched it before. We found the goods in the cushion, or in the upholstery. We took the car and brought it in. They were arrested at that time and brought in also.

Redirect examination.

By Mr. Jones:

At the time these men were at my apartment and tried to sell Cronenwett the three cases of whiskey, they had the same car with them. At the time the car was searched on the 15th of December, there was some conversation between the officers and defendant Carroll. Carroll said to take the whiskey, and when he said that, he put his hand in his pocket and pulled out some bills and he said to take the whiskey and I will make it right. He said that to Mr. Cronenwett. I don't know how much money he had in his hand.

Recross-examination.

By Mr. Lombard:

That was Mr. Carroll. The conversaion in my apartment took place between eight and nine in the evening, in September. Mr. Cronenwett was seeking to purchase some liquor then.

Q. And do you know whether he had solicited Mr. Carroll to get some for him?

A. He was to buy it from Mr. Carroll and Mr. Kiro.

He had conversation with both of them; they were both talking. I heard Mr. Kiro say something about getting liquor for Mr. Cronenwett. I heard Mr. Kiro say they had to go out to Fulton Street to get it. They did not bring or get any liquor.

18 WALTER A. PETERSEN, a witness for the Government, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Jones:

I am the Drug and Liquor Inspector of the State Department of Public Safety, and at various times worked with Fred Cronenwett, Federal prohibition officer, and Scully and Thayer. I was working with them on the 15th of December, 1921. I had seen the two respondents before. I saw them on *on* that day. We were patrolling the road. I saw the car that has been testified to here. We were going toward Saranac, just outside of Saranac. We passed them on the road. We were going toward Saranac and they were coming from the opposite direction and we met them. We passed them. We turned around and started after them. Mr. Cronenwett got out and walked back and Mr. Thayer and myself walked back with him. John Kiro and George Carroll, the respondents here, were in the car. The sixty-eight quarts of liquor were in the car also. The liquor was back of the back of the seat. John Kiro was driving the car. I don't believe I can explain how the cushions of the back of the seat were made up. It was upholstered right over the liquor after it had been put there. The upholstery evidently had been taken off and the liquor put in the back of the seat and the upholstery put over it again.

Q. Are you able to say anything with respect as to how hard the seat was, whether the back of the seat was harder than it would have been if the liquor wasn't in there?

A. Oh, you could feel it all right. It was packed right up against the leather and the packing of the back of the seat.

19 I think the bottles could be felt through the leather of the seat. I am not positive. I didn't ride in the seat. I fetched the liquor back to town and turned it over to Deputy Marshal Hanley, in the Federal Building. Cronenwett, Thayer and Scully stayed out on the road. I came back with the liquor.

Looking at Exhibits "A' and "B," those are the same kind of bottles.

Mr. Lombard: At this point, I want to renew my objection to it. I don't know as it is necessary, but to save the point that they are not competent to use in view of the manner in which it was obtained, without a warrant.

The Court: Objection will be overruled.

Mr. Lombard: Exception.

Looking at the labels on these two bottles, that is my signature. I wrote it on there. I don't remember just when it was, but about that time. I think Exhibits A and B are two of the bottles that were taken from the car. After we stopped the car and took the liquor out, there was a conversation between Mr. Carroll and Mr. Cronenwett, on the opposite side of the cars. I was quite

a way away from them and didn't pay particular attention to it. I don't know what the conversation was.

Cross-examination.

By Mr. Lombard:

I put my name on those exhibits after they came into the Marshal's office. I didn't put any mark on them that night and I wouldn't know them from any other bottles of like make or description.

Redirect examination.

By Mr. Jones:

Q. Well, does the bottle with the label that you signed
20 enable you to tell in that regard?
A. Yes, sir.

FRED CRONENWETT, a witness for the Government, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Jones:

I am in charge of the Federal Prohibition Department in this District. I am acquainted with these two respondents, and first saw them on September 29, 1921, in Mr. Scully's apartment on Oakes Street, Grand Rapids. There were three of them that came to Mr. Scully's apartment, one by the name of Kruska, George Kiro and John Carroll. I was introduced to them under the name of Stafford, and told them I was working for the Michigan Chair Company, and wanted to buy three cases of whiskey, and the price was agreed upon. After they thought I was all right, they said they would be back in half or three quarters of an hour; that they had to go out to the east end of Grand Rapids, to get this liquor. They went away and came back in a short time, and Mr. Kruska came upstairs and said they couldn't get it that night; that a fellow by the name of Irving, where they were going to get it, wasn't in, but they were going to deliver it the next day, about ten. They didn't deliver it the next day. I am not positive about the price. It seems to me it was around $130 a case. It might be $135. Both respondents took part in this conversation. When they came to Mr. Scully's apartment, they had this same car. While it was dark and I wasn't able to get a good look at this car, later, on the 6th day of October, when I was out on the road with Mr. Scully, I was
waiting on the highway while he went to Reed's Lake to
21 get a light lunch, and they drove by, and I had their license number and the appearance of their car, and knowing the two boys, seeing them on the 29th day of September, I was satis-

fied when I seen the car on December 15th it was the same car I had seen on the 6th day of October.

On the 6th of October, it was probably twenty minutes before Scully got back to where I was. I told him the Carroll boys had just gone toward Detroit and we were trying to catch up with them and see where they were going. We did catch up with them somewhere along by Ada, just before we got to Ada, and followed them to East Lansing. We gave up the chase at East Lansing.

On the 15th of December, when Peterson and Scully and I overhauled this car on the road, it was in the country, on Pike 16, the road leading between Grand Rapids and Detroit. When we passed the car, we were going toward Ionia, or Detroit, and the Kiro and Carroll boys were coming towards Grand Rapids when Mr. Scully and I recognized them and said "There goes the Carroll brothers," and we went on still further in the same direction we were going, and turned around and went back to them; drove up to the side of them. Mr. Scully was driving the car, I was sitting in the front seat, and I stepped out on the running board and held out my hand and said "Carroll, stop that car," and they did stop it. John Kiro was driving the car. After we got them stopped, we asked them to get out of the car, which they did. Carroll referred to me and called me by the name of "Fred" just as soon as I got up to him. Raised up the back part of the roadster; didn't find any liquor there; then raised up the cushion; then I struck at the lazyback of the seat and it was hard. I then started to open it up, and I did tear the cushion some, and Carroll said "Don't tear the cushion; we have only got six cases in there, and I took out two bottles and found out it was liquor; satisfied it was liquor. Mr. Peterson and
22 a fellow by the name of Gerald Donker came in with the two Carroll boys and the liquor and the car to Grand Rapids. They brought the two defendants and the car and the liquor to Grand Rapids. I and the other men besides Peterson stayed out on the road, looking for other cars that we had information were coming in. There was conversation between me and Carroll before Peterson started for town with the defendants. Mr. Carroll said "Take the liquor and give us one more chance and I will make it right with you." At the same time, he reached in one of his trousers pockets and pulled out money; the amount of it I don't know. I wouldn't say it was a whole lot. I saw a ten dollar bill and there was some other bills; I don't know how much there was; it wasn't a large amount.

As I understand, Mr. Hanley helped carry the liquor from the car. On the next day afterwards, we put this liquor in boxes, steel boxes, and left it in the Marshal's vault and it is still there now. Mr. Hanley and Chief Deputy Johnson, some of the agents and myself were there. Mr. Peterson was there the next day that the labels were signed by the different officers; those two bottles, Exhibits "A" and "B".

Q. Now, those two bottles, Exhibits "A" and "B", were those the two bottles you took out of the car out there, or were those two bottles taken out of the liquor after it got up here?

A. We didn't label them out on the road; simply found it was liquor and sent it in and this liquor was in Mr. Hanley's custody that evening and during the middle of the next day when we checked it over to see the amount of liquor that was there.

Mr. Johnson and I sealed the bottles and Mr. Johnson's name is on the label that goes over the box with mine, and this liquor was taken out of the case today.

23 It was taken out for the purpose of analyzation. The others were not broken until today.

Q. And are you able to tell us, from the label and from the bottles, whether it is part of the same liquor taken out of that car?

A. It has the appearance of it, yes, sir. Those are the bottles that were in there that Mr. Hanley said was gotten out of the Carroll car.

Cross-examination.

By Mr. Lombard:

I think I was the first one to get back to the Carroll car after it was stopped. I had a gun in my pocket; I didn't present it. I was the first one to the car and raised up the back of the car, but the others were there shortly afterward. We assembled right around the car immediately.

Q. And whatever examination and what investigation you made you went right ahead and did it in your own way?

A. Yes, sir.

Q. And took possession of it, arrested them, and brought them in?

A. Yes, sir.

Q. And at that time, of course you had no search warrant?

A. No, sir.

We had no knowledge that this car was coming through at that particular time.

Redirect examination.

By Mr. Jones:

The lazyback was awfully hard when I struck it with my fist. It was harder than upholstery ordinarily is in those backs; a great deal harder. It was practically solid. Sixty-nine quarts of whiskey in one lazyback.

24 DANIEL HANLEY, a witness for the Government, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Jones:

I am a Deputy Marshal. My signature appears on Exhibits "A" and "B". I wrote that signature on them the next morning after

the whiskey and gin was brought into our office. Mr. Peterson and some other man was down in the car with these two men here. I think the name of the other man is Donker, if I am not mistaken now. I think there was sixty-eight quarts of gin and whiskey together turned over by Mr. Peterson to our office. I put it in the vault, unlocked the vault just after five o'clock in the evening, when he got there, or just before five, and I put it in the vault and locked the vault. I think these two are the only bottles that were labeled with that kind of label. The liquor remained in the vault until the next morning. So far as I know, it was kept in the vault ever since. I didn't deliver it to any one this week. I wasn't there when Mr. Cronenwett got it from the Marshal's office.

Q. Well, you know those two bottles, that those two bottles, the labels were put on at that time?

Mr. Lombard: I think it is only fair to say we don't raise any question about that.

The Court: Very well.

JOHN W. FONNER, a witness for the Government, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Watkins:

I live in Chicago, Illinois, and am an Internal Revenue
25 chemist. I received a degree in chemistry at the University of Michigan, Ann Arbor.

The Court: Is it conceded it is whiskey and gin, and intoxicating liquor?

Mr. Lombard: Undoubtedly.

The Court: There is no necessity for spending time on that then.

Mr. Watkins: That will be all.

Mr. Jones: I offer Exhibit- A and B in evidence.

The Court: They will be received.

Mr. Lombard: Of course they are received under our objection.

The Court: Received subject to the objection and an exception noted.

Mr. Jones: The Government rests.

Mr. Lombard: We rest.

(Argument waived on both sides.)

Thereupon the Court charged the jury as follows:

"GENTLEMEN OF THE JURY: The indictment in this case contains two counts. In fact, however, there is but one charge contained in the indictment. Both counts grow out of the same transaction. In the first count of the indictment these respondents are charged with unlawfully transporting intoxicating liquor, and in the second count of the indictment they are charged with unlawfully having possession of intoxicating liquor. The evidence shows that such possession as they had was had in the process of trans-

portation, if they possessed it at all, and was a part of the transportation. Therefore only the first count of this indictment will be submitted to you for your consideration.

The charge contained in the indictment is that on or about
26 the 15th day of last December, these respondents did unlawfully transport intoxicating liquor. Since the enactment of the National Prohibition Act, it has been unlawful for any person to transport in any way, that is, by automobile or upon trains or in any other manner, intoxicating liquor.

It is the claim of the Government that upon that day the Government officers were somewhere east of this city and between here and Saranac, in the county of Ionia, patrolling the road and looking for violators of the law; that they met these two respondents riding in an Olds roadster automobile; that the officers then recognized the two respondents and after meeting them on the road, they turned about their own automobile and followed the respondents, catching up with them and stopping the car; that in the car they found 68 quarts of intoxicating liquor concealed in the cushion, or the back of the seat of the car.

Gentlemen, if you are satisfied from the evidence in the case and beyond a reasonable doubt that these respondents, both of them, were transporting intoxicating liquor in that manner, in other words, that they had intoxicating liquor in the automobile; that they knew it was there, and were carrying it in the automobile, it will be your duty to convict them. If you are not satisfied of that fact beyond a reasonable doubt, it will be your duty to acquit them. You may acquit one of the respondents and convict the other, or you may convict both of them or you may acquit both of them.

Mr. Clerk, you may swear an officer.

Thereafter the jury brought in a verdict of guilty as to both defendants on both counts of the indictment.

27 [Title omitted.]

Certificate of Court.

For as much as the matters hereinbefore set forth do not fully appear in the record of said cause, wherein the said defendants were placed upon trial, this Bill of Exceptions was presented to the Court by the said defendants, George Carroll and John Kiro, jointly and severally, with the prayer that the same may be settled, allowed, signed and certified by the judge who presided at the trial of this case, which is accordingly done this 11th day of August, 1922.

I further certify that the foregoing Bill of Exceptions contains only the evidence necessary to present clearly the questions of law involved in the rulings as to which exceptions are reserved; and I further certify that in so far as the testimony is incorporated by question and answer, I deem it necessary for a proper understanding of the questions presented. C. W. Sessions, District Judge of the

United States for the Western District of Michigan, Southern division.

28 [Title omitted.]

Petition for Writ of Error.

Now come George Carroll and John Kiro, Respondents and Plaintiffs in Error herein, and say that on or about the 27th day of June, 1922, the said Court entered a judgment in said cause, in favor of the United States and against these respondents and plaintiffs in error, in which judgment and the proceedings had prior thereto in said cause, certain errors were committed, to the prejudice of these respondents and plaintiffs in error, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these respondents and plaintiffs in error pray that a Writ of Error may issue in this behalf, out of the Supreme Court of the United States, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States. Clare J. Hall, James A. Lombard, Thomas E. Atkinson, Attorney for Respondents and Plaintiffs in Error.

Writ of Error Allowed July 14", 1922. C. W. Sessions, United States District Judge.

29 [Title omitted.]

Assignment of Errors.

The Respondents and Plaintiffs in Error in this cause, in connection with their Petition for Writ of Error, make the following Assignment of Errors which they aver exist:

First. That the United States Commissioner erred in overruling the respondents' motion for the return of certain property seized by the Federal Prohibition Agents.

Second. That the trial court erred in denying the motion of respondents and plaintiffs in error for the return of certain property seized by the Federal Prohibition Agents.

Third. That the trial court erred in admitting in evidence certain property seized by the Federal Prohibition Agents and information obtained in connection with said seizure.

Fourth. That the trial court erred in holding that certain property seized was not obtained and put in evidence in violation of the rights of respondents and plaintiffs in error, under the fourth and fifth Amendments to the Constitution of the United States.

30 Fifth. That the trial court erred in admitting in evidence certain liquor, Exhibits A and B, over respondents' objection that the same was obtained and used in evidence in violation of the rights of respondents and plaintiffs in error under the fourth and fifth Amendments to the Constitution of the United States.

Sixth. That the trial court erred in admitting in evidence, over respondents' objection, certain testimony of Arthur Scully, as to

conversation alleged to have taken place with Mr. Cronenwett and respondents in September, 1921.

Wherefore, the respondents and plaintiffs in error pray that said judgment be reversed. Clare J. Hall, James A. Lombard, Thomas E. Atkinson, Attorneys for Respondents and Plaintiffs in Error.

Service of copy of above assignments of error accepted this 14" day of July, 1922. Edward J. Bowman, United States Attorney.

31 [Title omitted.]

Stay and Supersedeas Bond.

Know all men by these presents: That we, George Carroll, of Detroit, Michigan, as principal, and Frederick W. Bauer, of Muskegon, Michigan, and Walter H. Vincent and Joseph J. Johnson, both of Grand Rapids, Michigan, as sureties, are held and firmly bound unto the United States of America in the full and just sum of One Thousand Dollars ($1,000.00) lawful money of the United States, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of June, in the year of our Lord One Thousand Nine Hundred and twenty-two.

Whereas, lately, at the District Court of the United States for the Western District of Michigan, Southern Division, said George Carroll was indicted by the Grand Jury and charged with a violation of the National Prohibition Act, so-called, and said cause coming on to be heard before a jury, said George Carroll was convicted as in said indictment charged, and later and on the 27th day of June, 1922, said George Carroll was sentenced by the said Court to pay a fine in the sum of Five Hundred Dollars ($500.00), payable in five days from said date, and in default of said payment that said George Carroll be imprisoned in the Kent County Jail until said fine was paid, not to exceed a term of four months, and a stay of execution and other proceedings having been asked for by said George Carroll, and the Court having ordered that upon the filing of a bond in the sum of One Thousand Dollars ($1,000.00), with sufficient sureties, a stay of proceedings should be had, within which to settle and sign a bill of exceptions and to sue out a Writ of Error in said cause from the Supreme Court of the United States or the Circuit Court of
32 Appeals for the Sixth Circuit, for the review of said cause, and it is necessary for the proper review of said cause to sign and settle a bill of exceptions therein.

Now the condition of the above obligation is such that if the said George Carroll shall cause said bill of exceptions to be signed and settled within a period of thirty days, and shall prosecute a Writ of Error to effect, and answer all damages and costs if he fail to make his plea good, or shall pay the judgment rendered in said cause, or surrender himself in full execution of said judgment, then this obligation to be void; else to remain in full force and effect. George

Carroll. Frederick W. Bauer. Walter H. Vincent. Joseph J. Johnson.

Signed and delivered in the presence of Thomas E. Atkinson and M. M. Dempsey.

WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

On this 27th day of June, 1922, before me personally appeared Frederick W. Bauer, Walter H. Vincent & Joseph H. Johnson sureties who signed the foregoing bond, and being by me duly sworn, each for himself says that he is worth the amount of said bond, over and above all debts and legal exemptions. Mary Madelon Dempsey, Notary Public, Kent County, Michigan. My commission expires Jan. 18, 1924. (Copy seal.)

33 [Title omitted.]

Stay and Supersedeas Bond.

Know all men by these presents: That we, John Kiro, of Detroit, Michigan, as principal, and Frederick W. Bauer, of Muskegon, Michigan, and Walter H. Vincent and Joseph J. Johnson, both of Grand Rapids, Michigan, as sureties, are held and firmly bound unto the United States of America in the full and just sum of One Thousand Dollars ($1,000.00) lawful money of the United States, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-two.

Whereas, lately, at the District Court of the United States for the Western District of Michigan, Southern Division, said John Kiro was indicted by the Grand Jury and charged with a violation of the National Prohibition Act, so-called, and said cause coming on to be heard before a jury, said John Kiro was convicted as in said indictment charged, and later and on the 27th day of June, 1922, said John Kiro was sentenced by the said Court to pay a fine in the sum of Five Hundred Dollars ($500.00), payable in five days from said date, and in default of said payment that said John Kiro be imprisoned in the Kent County Jail until said fine was paid, not to exceed a term of four months, and a stay of execution and other proceedings having been asked for by said John Kiro, and the Court having ordered that upon the filing of a bond in the sum of One Thousand Dollars ($1,000.00), with sufficient sureties, a stay of proceedings should be had, within which to settle and sign a bill of exceptions and to sue out a Writ of Error in said cause from the Supreme Court of the United States or the Circuit Court of Appeals for the
34 Sixth Circuit, for the review of said cause, and it is necessary for the proper review of said cause to sign and settle a bill of exceptions therein.

Now the condition of the above obligation is such that if the said John Kiro shall cause said bill of exceptions to be signed and settled within a period of thirty days, and shall prosecute a Writ of Error to effect, and answer all damages and costs if he fail to make his plea good, or shall pay the judgment rendered in said cause, or surrender himself in full execution of said judgment then this obligation to be void; else to remain in full force and effect. John Kiro. Frederick W. Bauer. Walter H. Vincent. Joseph J. Johnson.

Signed and delivered in the presence of Thomas E. Atkinson and M. M. Dempsey.

WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

On this 27th day of June, 1922, before me personally appeared Frederick W. Bauer, Walter H. Vincent & Joseph J. Johnson sureties who signed the foregoing bond, and being by me duly sworn, each for himself says that he is worth the amount of said bond, over and above all debts and legal exemptions. Mary Madelon Dempsey, Notary Public, Kent County, Michigan. My commission expires Jan. 18, 1924. (Copy seal.)

35 [Title omitted.]

Order Enlarging Time.

[Dated July 26, 1922.]

On application of Edward J. Bowman, United States Attorney, the time for settling the bill of exceptions in the above entitled cause is hereby extended to the 19th day of August, A. D. 1922. C. W. Sessions, District Judge.

36 & 37 **Citation and Service.**

UNITED STATES OF AMERICA, *ss:*

Supreme Court of the United States.

To United States of America and Edward J. Bowman, United States Attorney, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington on the 16 day of September next, pursuant to a Writ of Error filed in the Clerk's office of the District Court of the United States for the Western District of Michigan, Southern Division, wherein George Carroll and John Kiro are plaintiffs in error and the United States of America is defendant in error, to show cause; if any there be, why the judgment rendered against the said plaintiffs in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the City of Grand Rapids, in the District above named, this 18 day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-two. A. C. Denison, Circuit Judge.

Due personal service of a copy of the above citation admitted this 18 day of August, 1922. E. J. Bowman, United States Attorney.

38 [Endorsement omitted.]

39 [Title omitted.]

Præcipe for Transcript.

To the Clerk of the above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the Supreme Court of the United States, under the Writ of Error heretofore allowed by said Court, and include in the said transcript the following proceedings, pleadings and papers on file to-wit:

(1) Warrant for Arrest.
(2) Return of United States Commissioner.
(3) Indictment.
(4) Petition of George Carroll for return of property etc.
(5) Petition of John Kiro for return of property etc.
(6) Order denying petitions for return of property.
(7) Bill of Exceptions.
(8) Verdict and Judgment.
(9) Petition for Writ of Error.
(10) Order allowing Writ of Error.
(11) Assignment of Errors.
40 (12) Order extending time to settle bill of exceptions.
(13) Supersedeas Bond.
(14) Writ of Error.
(15) Clerk's Return to Writ of Error.
(16) Præcipe for Transcript of Record.
(17) Citation.
(18) Clerk's certificate to Transcript of Record and all endorsements on all said papers.

Said transcript is to be prepared as required by law and the rules of the Supreme Court of the United States. Clare J. Hall, James A. Lombard, Thomas E. Atkinson, Attorneys for Respondents and Plaintiffs in Error.

Service of copy of above præcipe accepted July 14th, 1922. Edward J. Bowman, United States Attorney.

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the District Court of the United States for the Western District of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you,

between The United States of America as Plaintiff and George Carroll and John Kiro as defendants, a manifest error hath happened, to the great damage of the said George Carroll and John Kiro, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 16th day of September next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the said Supreme Court, the 18 day of August in the year of our Lord one thousand *eight* hundred and twenty-two. Chas. J. Potter, Clerk of the District Court of the United States. [Seal of the U. S. District Court, Western District of Mich., Southern Division.]

Allowed by A. C. Denison, Circuit Judge.

42 **Clerk's Certificate.**

UNITED STATES OF AMERICA,
Western District of Michigan,
Southern Division, ss:

I, Chas. J. Potter, Clerk of said Court, do hereby certify that the annexed and foregoing is a true and compared copy of all the files and records in the within entitled cause, pursuant to the præcipe for record on appeal of appellant's counsel and the order of the court thereon, to which I have attached the original citation in said cause, the whole constituting the transcript on appeal as made up in conformity to such præcipe and order therefor.

Witness my official sig*an*ture and the seal of said Court at the City of Grand Rapids in said District and Division, this 23rd day of August, in the year of our Lord one thousand nine hundred and twenty-two. Chas. J. Potter, Clerk. [Seal of the U. S. District Court, Western District of Mich., Southern Division.]

Endorsed on cover: File No. 29,131. W. Michigan D. C. U. S. Term No. 581. George Carroll and John Kiro, plaintiffs in error, vs. The United States. Filed September 5th, 1922. File No. 29,131.